

National Coalition Against Censorship

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NCAC PARTICIPATING ORGANIZATIONS

Actors' Equity Association
American Association of
School Administrators
American Association of
University Professors
American Association of
University Women
American Booksellers Foundation
for Free Expression
American Civil Liberties Union
American Ethical Union
American Federation of Teachers
American Federation of Television
& Radio Artists
American Jewish Committee
American Jewish Congress
American Library Association
American Literary Translators
Association
American Orthopsychiatric Association
American Society of Journalists
& Authors
Americans United for Separation of
Church & State
Association of American Publishers
Authors Guild
Catholics for Choice
Children's Literature Association
College Art Association
The Creative Coalition
Directors Guild of America
The Dramatists Guild of America
First Amendment Lawyers Association
International Reading Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
National Council of the Churches
of Christ
National Council of Jewish Women
National Council of Teachers of English
National Education Association
The Newspaper Guild/CWA
Office of Communication,
United Church of Christ
PEN American Center
People for the American Way
Planned Parenthood Federation
of America
Screen Actors Guild
Sexuality Information & Education
Council of the U.S.
Society of Children's Book Writers
& Illustrators
Student Press Law Center
Union for Reform Judaism
Union of Democratic Intellectuals
Unitarian Universalist Association
United Methodist Communications,
United Methodist Church
Women's American ORT
Writers Guild of America, East
Writers Guild of America, West

Shawn Nelson
City Manager
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February 16, 2010

Dear Mr. Nelson:

I am writing on behalf of the National Coalition Against Censorship, an alliance of over 50 national non-profit organizations united in defense of free expression, regarding the removal of Jeff Hebron's work from Visual Expressions 2010. The removal of the artwork from an exhibition at the gallery of The Merc, a city-owned theater and gallery space, raises serious First Amendment concerns. We urge the City to apologize for removing Mr. Hebron's work and to draft exhibition policies that are consistent with First Amendment principles.

It is our understanding that Mr. Hebron's work, which had been selected for inclusion in Visual Expressions 2010 based on its artistic merit, was removed from the exhibition upon a request by the City Management. Apparently, according to the City Management, a painting of a nude figure does not belong in a gallery where families with children may come.

It is not the role of a public official to shield the eyes of the public from work because he subjectively decides it is not "family-friendly." As a public gallery, the gallery at The Merc is governed by the free speech clause in the First Amendment, meaning that the selection of art in the gallery should be based on viewpoint-neutral criteria such as creative excellence, cultural significance and intellectual richness. The arbitrary, subjective, and vague determination of what might be "appropriate" for the venue has led in this case to the impermissible imposition of an individual's viewpoint on the whole community and is likely to be found in violation of First Amendment principles.

Simple nudity is not sufficient ground for excluding artwork from public exhibition. If it were, a vast amount of great art, including masterpieces like Michelangelo's *David*, would be off limits. As the Supreme Court has noted multiple times, "'nudity alone' does not place otherwise protected material outside the mantle of the First Amendment." *Schad v. Mount Ephraim* (1981), *Jenkins v. Georgia* (1974), *Osborne v. Ohio* (1990). Nor is nudity in art "harmful to minors." Even if it were, that would not provide a basis for refusing to exhibit art work: "'[R]egardless of the strength of the government's interest' in protecting children, '[t]he level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox.'" *Ashcroft v. ACLU* (2002), and cases cited therein.

Our courts have time and again reaffirmed that the First Amendment prohibits public officials from censoring art they find offensive or provocative. The case of *Hopper v. City of Pasco*

(2001) in the Ninth Circuit Court of Appeals is a case in point. There, the plaintiff artists were invited to display their work at the City Hall, and were then precluded from doing so because the work provoked controversy and public officials considered it “sexually suggestive.” The Court noted that Pasco, by opening its display space to expressive activity has evinced “an intent to create a designated public forum.” In such a forum, the court concluded, the content based removal of work would only be justifiable if there is a “compelling state interest and is narrowly drawn to achieve that end.”

We urge you to reconsider your decision in this matter and make it clear to the public – through a carefully drafted policy – that work like the one you recently censored will be allowed in future exhibitions at the gallery at The Merc and other City venues.

Sincerely,
Svetlana Mintcheva
Director of Programs
National Coalition Against Censorship

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